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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

13 ALFREDO MACIAS,) Nos. 07cv2433-LAB
14 Defendant-Petitioner,) 06cr2038-LAB
15 v.) EXPARTE MOTION FOR 30-DAY
16 UNITED STATES OF AMERICA,) EXTENSION OF TIME TO RESPOND
17) TO DEFENDANT'S MOTION
18 Plaintiff-Respondent.) PURSUANT TO 28 U.S.C. § 2255

19 Plaintiff-Respondent United States of America, by and through its counsel, Karen P. Hewitt,
20 United States Attorney, and Davene L. Finnel, Special Assistant U.S. Attorney, hereby moves this
21 Court for an extension of time until March 31, 2008, to file its response to the above-captioned
22 motion pursuant to 28 U.S.C. § 2255. This motion is based on the files and records of this case,
23 together with the attached Declaration of Davene L. Finnel, Special Assistant U.S. Attorney.

24 || DATED: February 26, 2008 Respectfully submitted,

KAREN P. HEWITT
United States Attorney

27 /s/ Davene L. Finnel
28 DAVENE L. FINNEL
Special Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

12 ALFREDO MACIAS,) Nos. 07cv2433-LAB
13 Defendant-Petitioner,) 06cr2038-LAB
14 v.)
15 UNITED STATES OF AMERICA,) DECLARATION OF DAVENE L. FINNEL
16 Plaintiff-Respondent.) IN SUPPORT OF GOVERNMENT'S
) EX PARTE MOTION FOR 30-DAY
) EXTENSION OF TIME TO FILE
) RESPONSE TO PETITIONER'S MOTION
) PURSUANT TO 18 U.S.C. § 2255
17 _____)

J. Davene L. Finnel, declare as follows:

1. I am a Special Assistant United States Attorney for the Southern District of
20 California.

22 2. On or about August 17, 2006, Alfredo Macias (“Macias”) attempted to smuggle
23 approximately 10.22 kilograms of cocaine from Mexico into the United States through the Otay
24 Mesa Port of Entry. [CR 1.] On September 19, 2006, Macias waived indictment and was arraigned
25 on an Information charging him with violating 21 U.S.C. §952 and 960 (importation of cocaine).
26 [CR 10.] On October 3, 2006, Macias pled guilty, by way of a written Plea Agreement. Macias
27 waived his right to appeal and collaterally attack his sentence and conviction unless the Court
28 imposed a custodial sentence greater than the high end of the guideline range recommended by the

1 Government pursuant to the plea agreement. [CR 12.] On April 2, 2007, Macias was sentenced
2 to 50 months' custody, to be followed by five years of supervised release. [CR 32.]
3

4 3. On December 28, 2007, Macias filed a petition for writ of habeas corpus under 28
5 U.S.C. § 2255, claiming (1) the district court failed to identify 'crusial' [sic] factors calling for
6 departure from the guidelines [sic] factors set out in 18 U.S.C. Section 3553(a); and (2) violation
7 of his Sixth Amendment right to effective assistance of counsel. [CR 34.]
8

9 4. On January 14, 2008, an Order was filed in the district court directing the
10 Government to file an response to the above-referenced petition, on or before February 22, 2008.
11 [CR 35.]
12

13 5. On or about March 20, 2006, the undersigned was assigned to handle the sentencing
14 hearing which was scheduled for April 2, 2006. The undersigned had not filed a Notice of
15 Appearance in this case. As a result of this oversight, the undersigned did not receive electronic
16 case file notification regarding the filing of the petition for writ of habeas corpus under 28 U.S.C.
17 § 2255 or the Court's Order directing a response to the petition. In addition, the undersigned had
18 not received hard copies of the same. Furthermore, the appellate section of the United States
19 Attorneys Office had not receive copies of the same. As a result, the undersigned was unaware that
the petition had been filed and an Order had been issued by the Court.
20

21 6. On February 25, 2008, the undersigned was notified by the Court's staff regarding
the Court's Order in this case. The Government believes that it is necessary to order the transcripts
22 of the guilty plea and sentencing hearings to answer Macias' claim that he was denied effective
23 assistance of counsel. The transcripts have been ordered and expected to be delivered within two
24 weeks.
25

26 6. If the Court were to grant the Government an extension of time until March 31, 2008,
this would allow approximately two weeks for the undersigned to prepare the response.
27

7 According to the Bureau of Prison's Inmate Locator, Macias' projected release date
28 is November 2, 2010.
29

1 8. For the above-cited reasons, it is therefore requested that the Government receive an
2 extension of time until March 31, 2008, within which to file its response to Petitioner's motion.
3

4 I declare under penalty of perjury that the above is true and correct to the best of my
5 knowledge, information and belief.
6
7

8 DATED: February 26, 2008.
9

10 _____
11 /s/ Davene L. Finnel
12 DAVENE L. FINNEL
13 Special Assistant U.S. Attorney
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07cv2433-LAB

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALFREDO MACIAS) Nos. 07cv2433-LAB
Defendant-Petitioner,) 06cr2038-LAB
v.)
UNITED STATES OF AMERICA,)
Plaintiff-Respondent.)

IT IS HEREBY CERTIFIED THAT:

14 I, am a citizen of the United States over the age of eighteen years and a resident of San Diego
15 County, CA; my business address is 880 Front Street, Room 6293, San Diego, CA 92101-8893; I
16 am not a party to the above-entitled action; and

17 I deposited in the United States mail at San Diego, California, in an envelope bearing the
18 requisite postage, a copy of the Government's Ex Parte Application for Extension of Time Within
19 Which to File a Response to Defendant's Motion Pursuant to 18 U.S.C. § 2255, addressed to:
20 Alfredo Macias, No. 99945-198, California City Correctional Center, P. O. Box 3001-0001,
21 California City, CA 93504, the last known addresses, at which places there is delivery service of
22 mail from the United States Postal Service.

23 I declare under the penalty of perjury that the foregoing is true and correct.

24 || Executed on February 28, 2008.

Ginger Stacey